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December 8, 2000

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communication Commission
The Portals -- Room TW-B204F
445 12th Street, S.W.
Washington, D.C. 20554

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DEC 8 2000

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: Oral Ex Parte Presentation CC Docket No. 96-128

Dear Ms. Salas:

On December 7, 2000, Charles Sullivan and Kay Perry of Citizens United for the Rehabilitation of Errants (CURE), Cheryl Tritt of Morrison & Forrester and I met with Mary Beth Richards from the Office of the Managing Director and Adam Candeub from the Competitive Pricing Division of Common Carrier Bureau to discuss the views of CURE inmate calling issues and the prison payphone proceeding.

In the course of the meeting, CURE expressed the view that the record in CC Docket No. 96-128 compels the Commission to reject adoption of a federal inmate call surcharge or the other proposals advanced by the Inmate Calling Service Providers Coalition. We provided an update of grass-roots activity throughout the country including the Equitable Telephone Charges ("ETC") Campaign that CURE has been coordinating, several lawsuits, and the potential for congressional legislation. CURE urged the Commission to consider several potential courses of action that would improve telecommunications services for inmates. These include:

- Dismiss the petition of the Inmate Service Providers' Coalition.
- Establish provision of 800 calls for prisoners.
- Encourage, facilitate and, to the extent possible, mandate the use of a system debit system for inmate calls.
- Encourage, facilitate and, to the extent possible, mandate billed party preference for the recipients of collect calls from inmates.

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Ms. Magalie Roman Salas

December 8, 2000

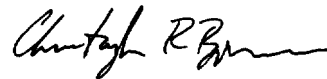
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- Foster competition in inmate payphone services.
- Mandate interstate rate caps.
- Make a strong statement in favor of the public interest.
- Insure fair inter-carrier compensation, with falling rates for all consumers.
- Establish complaint procedures.

We also distributed the attached White Paper entitled "Inmate Payphone Services: Remembering the Public Interest."

An original and two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(b) of the Commission's rules.

Respectfully submitted,



Christopher R. Bjornson*

Enclosure

cc:	Adam Candeub)	
	Mary Beth Richards)	
	Casey Anderson)	without enclosures
	Kay Perry)	
	Charles Sullivan)	
	Cheryl Tritt)	

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* Not admitted in the District of Columbia.

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

**Inmate Payphone Services
Remembering the Public Interest**

**A White Paper
Prepared by the
Citizens United for the Rehabilitation of Errants
CC Docket No. 96-128**

December 7, 2000

Inmate Payphone Services Remembering the Public Interest CC Docket No. 96-128

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges. (47 U.S.C. § 151).

Section One of the Communications Act of 1934 defines the public interest mission of the Federal Communications Commission. This purpose, simply put, is to make available affordable telecommunications to all Americans. It is often easy to forget this overarching statement of principle when dealing with the micro-details of industry regulatory decision-making. It is, however, this statement of the public interest that defines what the public needs from telecommunications and how the FCC should be guided in carrying out its regulatory mandate.

This brief White Paper has been developed by the Citizens United for the Rehabilitation of Errants (“CURE”) to help frame several of the issues related to the provision of inmate payphone services in a manner that is consistent with the Commission’s public interest mandate. In the inmate payphone proceeding, the Commission is considering several issues relating to the provision of inmate payphone service. These issues are state-imposed rate ceilings, compensation mechanisms, costs,

and incumbent discrimination. These issues are all important. CURE, however, believes that these regulatory issues must be examined within the larger context of the public interest issues involved with inmate payphone services.

In 1996, the Commission established Docket No. 96-128 to consider the pay telephone reclassification and compensation provisions of the Telecommunications Act of 1996 and, subsequently, the Commission issued a series of orders to implement the provisions.

The Inmate Calling Service Providers filed an appeal of the *First Report and Order on Reclassification* with the United States Court of Appeals for the District of Columbia Circuit. This appeal argued that the Commission erred by failing to prescribe a special compensation charge for payphone providers who serve inmates, and by failing to address allegations of subsidies and discrimination on the part of Bell Operating Company payphone providers in favor of their own inmate payphone operations. The Commission asked for a voluntary remand of the inmate issues, which the court granted on January 30, 1998.

In May 1999, the Commission invited parties to update the record on the specific regulatory issues related to inmate payphones. Most of the commenters were carriers, concentrating on intercarrier regulatory issues. CURE participated in both the comment and reply comment rounds of this proceeding in order to insure that the consumers of inmate payphone services were represented in this proceeding.

This White Paper details CURE's involvement in the inmate payphone issue and highlights the public interest issues at stake. When the issues involved in this proceeding

are examined from the perspective of the public interest, it becomes clear that the Commission can take several steps to promote the public interest with regards to inmate payphones. CURE suggests that Commission should:

- Dismiss the petition of the Inmate Service Providers' Coalition.
- Establish provision of 800 calls for prisoners.
- Encourage, facilitate and, to the extent possible, mandate the use of a system debit system for inmate calls.
- Encourage, facilitate and, to the extent possible, mandate billed party preference for the recipients of collect calls from inmates.
- Foster competition in inmate payphone services.
- Mandate interstate rate caps.
- Make a strong statement in favor of the public interest.
- Insure fair inter-carrier compensation, with falling rates for all consumers.
- Establish complaint procedures.

CURE'S INVOLVEMENT IN THE PRISON PAYPHONE ISSUE

CURE is a non-profit nationwide organization dedicated to the reduction of crime through the reform of the criminal justice system. CURE is a prison and jail reform advocacy group headquartered in Washington, D.C. with chapters or affiliates in most states of the union. Among the changes CURE seeks are fair and humane treatment for our prisoners, far less reliance on incarceration as a solution to our crime problems, far more reliance on alternatives to prisons and abolishment of capital punishment.

CURE has seen that offenders need guidance and options that will allow them to become productive members of society. At present there is almost no effort on the part of our criminal justice system to provide offenders with an alternative life style. They are placed into crowded, inhumane prisons with little opportunity or incentive to change their behavior, then released back into society, often worse than when they went into prison.

CURE's motto, "Today's Inmates are Tomorrows Neighbors" asks the question, "What kind of person do you want released to live next to you tomorrow?" CURE's primary goal is to provide sane alternatives to our present ineffective, inhumane and financially burdensome system of justice.

CURE's experience in helping the rehabilitation process demonstrates that we can bring prisoners back into society as law-abiding citizens. To do so, however, requires that a connection between a prisoner and his or her world outside of prison be established and maintained. This connection requires effective avenues of communications. One of these avenues is for prisoners to have access to telephones to maintain contact with their families. Corrections experts across the country increasingly have recognized the importance of maintaining connections with the outside world to the successful rehabilitation of convicted felons. The Bureau of Prisons views debit calling as an important rehabilitation tool. Most correctional facilities have adopted policies allowing higher levels of telephone use by inmates, but they have done little or nothing to introduce competition to these telecommunications services or reduce prices, and rates have been raised in a number of instances. Often, the customer service levels for these calls are extremely poor, cutting off calls and forcing more surcharges.

Excessive charges for collect calls from inmates exact a heavy toll on society as well as prisoners, their friends, and their families. In most prison systems throughout the country, prisoners are allowed to make only collect telephone calls. In addition to the high cost of a collect call, there is often a surcharge placed on each call. Most calls are limited in time. If a family's business cannot be completed within the time allowed, they

may place another call but have to pay another surcharge. Prison systems' contracts with the telephone companies generally require that those companies pay a commission. Once the companies get the contracts, they have no competition, allowing them to operate in a monopoly environment where the consumers are completely powerless to control their economic decisions. The result has been that the families of the incarcerated wind up paying telephone rates that can in no way be considered just and reasonable in an era of telecommunications choice and competition. The rates are exorbitant and rising. They cannot be justified.

In response to this outrage, at its June 1999 meeting, the National CURE Board of Directors authorized a nationwide campaign to demand Equitable Telephone Charges (ETC) for calls originating in a prison. The campaign is intended to educate policy makers, telephone company leaders, and the general public of the importance of family contact, the significance of the telephone in ensuring that contact and the moral implications of targeting this vulnerable population. CURE wants to see telephone privileges for all prisoners, the elimination of all surcharges and the offer of debit system calling to prisoners in all prisons throughout the country. A pilot project for this campaign was conducted in Michigan in 1999. CURE is currently using what it learned from that campaign to improve this nationwide effort.

Several organizations are now co-sponsoring the campaign including the American Friends Service Committee, the Correctional Association of New York, the Justice Policy Institute, the Criminal Justice Ministry, Society of St. Vincent DePaul, St. Louis Council, the Women's Project, the Coalition for Prisoners' Rights, Project Return,

the National Coalition to Abolish the Death Penalty, Massachusetts Correctional Legal Services, Family Voices of Oklahoma, Families of Incarcerated Individuals, and Dominicans of St. Catharine Kentucky.

For many years, CURE has been involved with the issue of inmate payphones and has attempted to focus considerable attention on the issue of prisoners' access to telephones. Except for the state of Texas, where few prisoners have access to phones, the problem of high surcharges and/or limited calling options is nearly universal. Deregulation of the telephone companies by the FCC and state public service commissions, along with demands by departments of corrections for large commissions (premise fees), have combined to drive up surcharges and have discouraged the offer of choices such as debit system calling and/or the use of 800 numbers.

CURE has worked for years to promote a system called Billed Party Preference (BPP). As the name implies, under such a system, the person who pays the telephone bill gets to choose the long distance company. That means that, rather than the Department of Corrections choosing the carrier, each household that accepts collect calls from a prisoner would choose its own company. CURE has consistently urged the Federal Communications Commission (FCC) to develop a Billed Party Preference systems for those families accepting calls from a prison. The BPP technology has not yet been perfected. Unfortunately, the FCC has not acted to mandate that prisoner telephone calls be included when the technology is developed.

National CURE has also urged that debit system calling be available to all prisoners. Under such a system, each prisoner is eligible to have a telephone account to

use in making direct (rather than collect) telephone calls to family and friends. Such a system exists in several state corrections systems, and is available in the Federal Bureau of Prisons. CURE's position is that both collect calling (using BPP) and debit card calling should be available to prisoners.

CURE has also sent representatives to meetings of the American Correctional Association (ACA), urging that professional group to set standards or establish policies that would encourage prison systems to enter into contracts providing reasonable rates for prisoner phone calls. In that process, CURE discovered that on August 21, 1996, the ACA Board of Governors passed a Resolution on Excessive Phone Tariffs at its Congress on Corrections in Nashville, Tennessee. The resolution supports the CURE position and reads as follows:

Whereas correctional professionals have a fundamental responsibility to encourage and support activities which foster the maintenance of family and community ties between offenders and the free world; THEREFORE BE IT RESOLVED, that correctional agencies should discourage profiteering on tariffs placed on phone calls which are far in excess of the actual cost of the calls, and which could discourage or hinder family or community contacts.

Several of CURE's state chapters have also worked on this problem. Virginia CURE, for example, was successful in urging that state's lawmakers to authorize a study of the issue. The study resulted in a reduction in the surcharges paid for intrastate calls.

In addition, litigation is moving forward in several states, including New York, Massachusetts, Illinois, Ohio, New Mexico and the District of Columbia. This litigation exposes unlawful conduct such as violations of antitrust, telecommunications, and state

contracting laws. Several constitutional issues such as interference with contract have been raised as well.

THE PUBLIC INTEREST ISSUES RELATED TO INMATE PAYPHONE SERVICES

CURE points out these grass-roots efforts and lawsuits to illustrate that the regulation of telecommunications carriers envisioned in this proceeding does not exist in a vacuum. By examining what inmates and their families use telecommunications for, the public interest rationale for their telecommunications usage can also be discovered.

The public interest rationale is quite clear – the rehabilitation of prisoners. The telecommunications means for achieving this goal – maximizing the telephone calls between inmates and their families at just, reasonable and affordable rates.

The current situation is the exact opposite. Currently, inmates do not have enough contact with their families and the rates their families are forced to pay by the monopolies that hold the prison system contracts are unjust and unreasonable. Steps must be taken at both the state and national level to correct this problem. CURE realizes that it will take more than the FCC to address the situation, but the FCC plays a critical role and it cannot divorce itself from the public interest principle involved in inmate telecommunications.

Obviously, this is a situation that must be addressed by state correctional authorities. These officials have the power to act in a manner consistent with the public interest. Pressure must be brought to bear on these officials so that they encourage a high level of communications between inmates and their families. The contracts issued for

prison payphone systems should encourage competition between carriers and allow for marketplace innovations like debit calling and 800 numbers so that the families of inmates can enjoy the benefits of affordable telecommunications. State caps should be placed on intrastate rates so that there is some check on the rates charged to inmates. States must understand that the families of inmates cannot finance state government operations through excessive and unreasonable surcharges. These are some of the things that state authorities must undertake in order to address this unreasonable situation.

The Federal Communications Commission also plays a vital role in this process. Far from simply regulating that behavior of carriers, the Commission sets the tone for the industry. What the Commission says and doesn't say carries great weight with state governments and the judiciary. If state correctional authorities see the Commission take strong action to limit the rates charged to families of inmates for interstate calls, then they will follow suit on intrastate calls. With regards to the courts, they defer to the FCC. At least two courts have recently found that rates charged to the families of inmates were not unjust and unreasonable because there was no pronouncement by the Commission to the contrary. Instead of using the FCC to defend their excessive profiteering, carriers would have to demonstrate their willingness to be innovative and offer improved services to customers in order to win contracts and maximize their business opportunities if the Commission were to step forward in the public interest.

Consequently, CURE urges the Commission to examine the various issues related to inmate payphones with a focus on the public interest. When the Commission views

the issues through this prism, the following are some of the specific steps that CURE believes the Commission should adopt:

- **Dismiss the petition of the Inmate Service Providers' Coalition.** The Coalition has asked the Commission to impose an additional \$0.90 surcharge on inmate calls. This is antithetical to the public interest.
- **Establish provision of 800 calls for prisoners.** Many prison systems do not allow their prisoners access to 800 numbers. Access to toll-free calls would provide a means for families of inmates to control this telecommunications.
- **Encourage, facilitate and, to the extent possible, mandate the use of debit cards for collect calls.** Technology exists that will allow for correctional system safeguards. Debit cards and call-around services provide competitive alternatives to the monopolistic practices now in place.
- **Encourage, facilitate and, to the extent possible, mandate billed party preference for the recipients of collect calls from inmates.** This will allow the families of inmates to control the economic decisions of their telecommunications.
- **Foster competition in inmate payphone services.** The Commission has been facilitating competition in every sector of the telecommunications industry except for inmate payphones. It is time for the Commission to change this approach and develop means for consumers to have meaningful choices between providers.
- **Mandate interstate rate caps.** Inmate payphone services are not provided in a competitive environment for consumers. Consequently, there is no justification that their rates should not be regulated.
- **Make a Strong Statement in Favor of the Public Interest.** Simply affirmatively endorsing just and reasonable rates for the families of inmates would have a tremendously persuasive impact on states, carriers, and the courts.
- **Insure fair inter-carrier compensation, with falling rates for all consumers.** Obviously, no carrier should be allowed to profit unfairly from the work of other carriers. Some providers have suggested that they are not getting a fair distribution of the rates currently paid out by the families of inmates. The Commission should establish fair inter-carrier compensation procedures that facilitate lower rates for all consumers. In no instance should the Commission adopt compensation models that increase the rates for the families of any prisoners.

- **Establish complaint procedures.** The Commission should establish within the Enforcement Bureau an efficient complaint procedure with severe sanctions, including forfeitures, for carriers that violate the minimal consumer protections that currently exist for the families of inmates. Complaints involving disclosure of rates and service disconnections are widespread. The Enforcement Bureau can provide assistance to these families.

There are also several regulatory approaches that ignore the public interest.

Among the courses of action that CURE believes the Commission must avoid are:

- **Blindly regulating without consideration of the impact on the families of inmates.** To do so would be to ignore the public interest.
- **Permitting additional surcharges.** Some carriers have suggested that they be given an additional surcharge, paid for by the families of inmates, on top of what they already receive. The families of inmates pay more than enough to fairly compensate all parties concerned. The states and carriers need to stop profiteering, reduce the rates and figure out a compensation method that is fair to all the carriers without increasing rates on any inmates.
- **Allowing Cost-Based Regulated Rates.** In the old, monopoly-controlled telecommunications marketplace, rates were regulated and set to cost. As soon as competition was introduced to the marketplace, these rates fell dramatically. Was this because these carriers were all of a sudden willing to lose money? No. They had to react to the market. Inmate payphone services are analogous to the old Bell System. It is a monopoly system. While CURE agrees that the rates should be regulated and controlled, it would be unwise to do so simply on the word of what the monopolist says their services cost. Instead, a market-based evaluation of similar services should be conducted and rates capped in accordance with analogous markets that have introduced competition.

CONCLUSION

Payphones within prison systems raise a unique set of public policy and regulatory issues for telecommunications consumers, providers and policymakers. When reviewing these issues, it can be tempting to separate the public interest principles underlying the provision of inmate telephone service and concentrate on the minute

regulatory issues. To do so, however, will help insure that inmates can be safely rehabilitated into society and that their families will be able to stay connected. These goals clearly fall within the Commission's public interest principles and where the Commission has the opportunity to act or is required to do so by law, its decision-making should be guided by the public interest needs of these families.